

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

**OMNIPOINT COMMUNICATIONS, INC., d/b/a  
T-MOBILE, and OMNIPOINT NY MTA  
LICENSE, LLC,**

*Plaintiffs,*

-VS-

**TOWN OF LAGRANGE, TOWN OF  
LAGRANGE ZONING BOARD OF APPEALS,  
TOWN OF LAGRANGE PLANNING BOARD,  
and TOWN OF LAGRANGE PLANNING,  
ZONING, AND BUILDING DEPARTMENT,**

*Defendants.*

**DECLARATION OF  
JON P. DEVENDORF**

Civil Action No. 08-CV-2201  
(WCC) (GAY) (ECF Case)

Jon P. Devendorf hereby declares as follows:

1. I am an attorney duly licensed to practice law before the courts of the State of New York, and a partner at the law firm of Hiscock & Barclay, LLP, attorneys for plaintiffs, Omnipoint Communications, Inc., d/b/a T-Mobile, and Omnipoint NY MTA License, LLC (collectively, "T-Mobile"). I have been admitted to practice law before the Court in this matter. I am fully familiar with the facts and circumstances of this action.

2. I make this Declaration in opposition to the Motion for Partial Summary Judgment of defendants Town of LaGrange, Town of LaGrange Zoning Board of Appeals, Town of LaGrange Planning Board, and Town of LaGrange Planning, Zoning and Building Department.

3. The purpose of this Declaration is to place before the Court certain relevant documents and evidence.

4. Attached hereto as Exhibit A is a true and correct copy of the Resolution enacting Local Law 1 of 2008.

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 15, 2008

s/ Jon P. Devendorf

Jon P. Devendorf

**CERTIFICATE OF SERVICE**

I certify that on August 15, 2008, I filed a copy of the foregoing document with the Clerk of the Court via the CM/ECF system, which gave notice to the following attorney:

**Rebecca Ann Valk** rvalk@vandewaterlaw.com

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s/ Jon P. Devendorf

Jon P. Devendorf

# EXHIBIT A

RESOLUTION

Councilman O'Hare offered the following resolution which was seconded by Councilman Borchert, who moved its adoption:

WHEREAS, a local law was introduced entitled A LOCAL LAW OF THE TOWN OF LAGRANGE, DUTCHESS COUNTY, NEW YORK TO AMEND SECTION 240-49 "WIRELESS COMMUNICATIONS TOWERS AND FACILITIES" TO REVISE THE APPLICATION REQUIREMENTS; and

WHEREAS, a public hearing in relation to said local law was held on January 23, 2008 at 7:30 p.m. and continued on February 20, 2008 at 7:30 p.m., prevailing time; and

WHEREAS, notice of said public hearing was given pursuant to the terms and provisions of the Municipal Home Rule Law of the State of New York; and

WHEREAS, said local law has been on the desks of the members of the Town Board of the Town of LaGrange for at least seven (7) days, exclusive of Sunday;

NOW, THEREFORE, BE IT RESOLVED that the following local law is hereby enacted:

TOWN OF LAGRANGE LOCAL LAW NO. 1 OF THE YEAR 2008

Section 1. Town of LaGrange Town Code Section 240-49(H) is hereby amended to create a new subsection (15), which shall read as follows:

(15) The owner of the tower and/or facility, if different from the applicant, is a necessary party to any application submitted pursuant to this section. As part of the application, the owner of the tower and/or facility must disclose, in writing, the existence of all negotiations, ventures, discussions, contracts, proposals or other active communications it has, or has had, within the preceding one (1) year with any person, corporation, partnership or other entity regarding additional collocation of facilities at the subject site. For purposes of this subsection, which is intended to identify foreseeable cumulative visual and related environmental impacts and to avoid piecemeal and staggered environmental review, "active communications" shall be defined as one or more written proposals by either party regarding terms for the collocation of facilities or those which identify the physical nature, height of placement, configuration, shape and size of the facilities to be collocated at the site. The identity of the collocater(s) and the monetary terms and conditions of the active communications with the owner need not be disclosed, and may be redacted, as it is the purpose and intent of this provision to obtain disclosure of

the physical nature and aspects of the potential facilities, including but not limited to visual effects, to be collocated at a site in order to allow for consideration of physical and environmental impacts in a cumulative fashion.

Section 2. Town of LaGrange Town Code Section 240-49(H) is hereby amended to re-number existing subsection (15) to become subsection (16).

Section 3. This local law shall take effect immediately upon filing with this state's Secretary of State.

RESOLVED that the Town Clerk shall file a certified original of this local law in the office of the Town Clerk and one (1) certified copy in the Office of the Secretary of State, State of New York, such certified copy to have attached thereto a certificate executed by the attorney for the Town of LaGrange that it contains the correct text and that all proper proceedings have been had or taken for the enactment of this local law.

The foregoing resolution was voted upon with all councilmen voting as follows:

Supervisor Wagner

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AYE

Councilman Luna	<u>AYE</u>
Councilman Beck	<u>AYE</u>
Councilman Borchert	<u>AYE</u>
Councilman O'Hare	<u>AYE</u>

DATED: LaGrangeville, New York  
February 20, 2008

  
CHRISTINE O'REILLY-RAO, TOWN CLERK

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